

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-CV-560-BO

TWAN BEY,

Plaintiff,

v.

ROBERT ROMERO, LUISUS MCRAVIN,
HARNETT COUNTY SUPERIOR COURT and
THE STATE OF NORTH CAROLINA,
Defendants.

ORDER

This matter is before the Court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge Robert T. Numbers, II, pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b). [D.E. 7]. The Court ADOPTS the M&R.

BACKGROUND

On November 8, 2017, plaintiff filed a complaint styled as a removal from municipal court, along with several other documents in the Eastern District of North Carolina. [DE 1]. Magistrate Judge Robert T. Numbers issued an order articulating several deficiencies in plaintiff’s complaint and requiring plaintiff to correct them. [DE 2]. This included directing plaintiff to either apply to proceed in forma pauperis or to pay the required \$400 filing fee. Plaintiff then submitted a form to proceed in forma pauperis, which was missing needed information, such as how he supports himself. [DE 3]. Magistrate Judge Numbers then ordered plaintiff to submit a particularized application. [DE 4]. Plaintiff did not do so, instead filing pleadings claiming he did not need to fill out the application because proceeding forma pauperis is a constitutional right. [DE 5]. Magistrate Judge Numbers then recommended that plaintiff’s application be denied and he be ordered to pay the filing fee or have his case dismissed. [DE 7].

That recommendation is now before this Court. Plaintiff also noticed an appeal to the Fourth Circuit, which was dismissed for failure to prosecute. [DE 18].

DISCUSSION

“The Federal Magistrates Act requires a district court to make a *de novo* determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); *see* 28 U.S.C. 636(b). Absent timely objection, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond*, 416 F.3d at 315 (quotation omitted).


Plaintiff has not made a formal objection to the M&R, though after noticing his appeal he filed a series of documents. [DE 14, 15, 16, 17]. The meaning of these filings is far from clear, but they do not appear to be an objection to Magistrate Judge Numbers’ finding that plaintiff had not provided the information required in order to proceed in forma pauperis. Even if they were, Magistrate Judge Numbers is clearly correct. 28 U.S.C.A. § 1915 requires parties to submit information about their finances in order to be exempted from paying fees and costs.

Having considered the M&R and record, the Court is satisfied that there is no clear error on the face of the record and accepts the Magistrate Judge’s recommendation. Plaintiff has fourteen (14) days from the date of entry of this order to remit the \$400.00 filing fee, or his case shall be dismissed. The Court also notes that plaintiff has not yet corrected the other deficiencies identified in Magistrate Judge’s first order. [DE 2]. Plaintiff is also granted fourteen (14) days to do so. Failure to do so will result in the dismissal of this action for failure to prosecute. .

CONCLUSION

The court ADOPTS the Magistrate Judge's M&R. [DE 7]. Plaintiff is GRANTED fourteen (14) days to remit the filing fee and correct the errors in his complaint, or his case shall be dismissed.

SO ORDERED, this 5 day of May, 2018.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE